

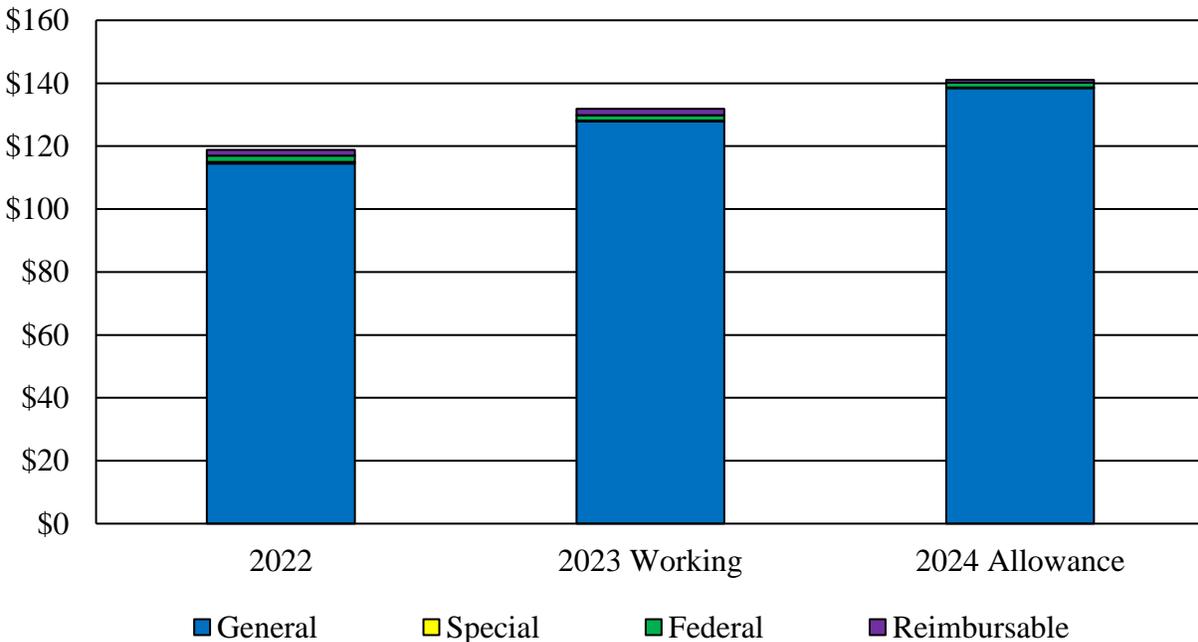
C80B00
Office of the Public Defender

Program Description

The Office of the Public Defender (OPD) provides counsel and related services to indigent persons through 12 district operations, 4 divisions, and 2 specialized units. As defined in the Code of Maryland Regulations 14.06.03.01, indigent means “any person taken into custody or charged with a serious crime who under oath or affirmation subscribes and states in writing that he is financially unable, without undue hardship, to provide for the full payment of an attorney and all other necessary expenses of legal representation.” Legal representation is provided in criminal trials, bail reviews, appeals, juvenile cases, post-conviction proceedings, parole and probation revocations, and involuntary commitments to mental institutions. The four divisions that support the office are (1) General Administration; (2) District Operations; (3) Appellate and Inmate Services; and (4) Involuntary Institutionalization Services.

Operating Budget Summary

Fiscal 2024 Budget Increases \$9.2 Million, or 7.0%, to \$141.1 Million
(\$ in Millions)



Note: The fiscal 2023 working appropriation includes deficiency appropriations including this agency’s share of a deficiency appropriation budgeted in the Statewide Account within the Department of Budget and Management (DBM). Fiscal 2024 salary enhancements are budgeted in the Statewide Account within DBM.

For further information contact: Jacob L. Pollicove

Jacob.Pollicove@mlis.state.md.us

Fiscal 2023

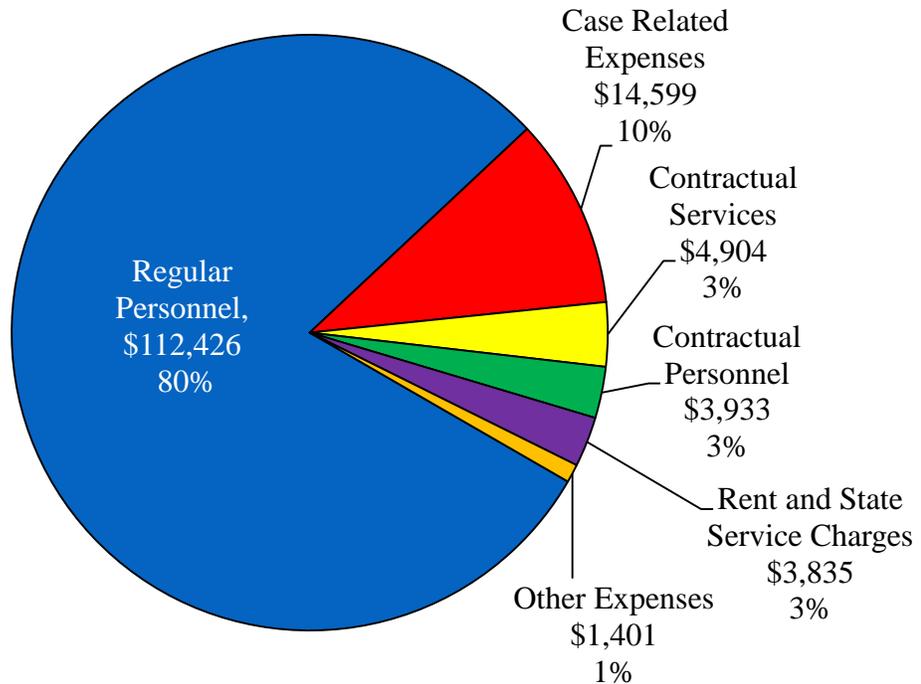
Proposed Deficiency

Proposed deficiency appropriations supplement the fiscal 2023 budget for OPD by \$926,938 in general funds for the purpose of funding accrued leave payouts. OPD has cited the number of retirees in fiscal 2023 along with the seniority of those employees as the reason for the deficiency.

Fiscal 2024 Overview of Agency Spending

Approximately 80% of the OPD budget for fiscal 2024 is allocated for regular personnel salaries, as illustrated in **Exhibit 1**. Case related expenses including panel attorneys comprise an additional 10% of the OPD allowance.

Exhibit 1
Overview of Agency Spending
Fiscal 2024 Allowance
(\$ in Thousands)



Source: Department of Budget and Management; Department of Legislative Services

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The other expenses, which occupy approximately 1% of the budget, include utilities, motor vehicle costs, office supplies, and new and replacement technology equipment.

Proposed Budget Change

As shown in **Exhibit 2**, the fiscal 2024 allowance for OPD increases by \$9.2 million, or approximately 7%. The majority of the increase is allocated for personnel spending. Other significant areas of increased spending include statewide agency expenses and printing of materials.

**Exhibit 2
Proposed Budget
Office of the Public Defender
(\$ in Thousands)**

How Much It Grows:	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2022 Actual	\$114,458	\$476	\$2,018	\$1,852	\$118,804
Fiscal 2023 Working Appropriation	127,834	292	1,709	2,059	131,894
Fiscal 2024 Allowance	<u>138,398</u>	<u>283</u>	<u>1,452</u>	<u>964</u>	<u>141,097</u>
Fiscal 2023-2024 Amount Change	\$10,564	-\$9	-\$257	-\$1,094	\$9,204
Fiscal 2023-2024 Percent Change	8.3%	-3.1%	-15.0%	-53.2%	7.0%
Where It Goes:					<u>Change</u>
Personnel Expenses					
Funding for 27 new assistant public defenders, 9 secretaries, 4 social workers, and 3 paralegals.....					\$2,994
Employee and retiree health insurance					2,494
Turnover adjustments.....					2,470
Incremental salary increases					1,324
Annualization of November 2022 4.5% COLA.....					1,215
Employees’ retirement system.....					543
Accrued leave payout.....					-927
Other fringe benefits, including adjustments for positions funded through non-general fund grant reimbursements.....					-1,548
Other Changes					
Contractual personnel expenses					718
Agency allocation for statewide cost allocations.....					162

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Where It Goes:	<u>Change</u>
Other adjustments	49
Janitorial expenses realigned to actual level from fiscal 2022.....	44
Printing of evidence materials for use in court	44
Digital forensics expenses under the Abell Foundation Forensic Lab grant	32
Replacement cargo van for office moves, archival, and courier services.....	31
Garage parking at Baltimore City office.....	18
Fuel for motor vehicles	6
Leadership training for management and annual conference expenses for attorneys	-13
Juvenile Justice and Mental Health Collaboration Project grant funding final year spending change	-102
Development expenses for the eDefender major IT project.....	-350
Total	\$9,204

COLA: cost-of-living adjustment

IT: information technology

Note: Numbers may not sum to total due to rounding. The fiscal 2023 working appropriation includes deficiency appropriations including this agency’s share of a deficiency appropriation budgeted in the Statewide Account within the Department of Budget and Management (DBM). Fiscal 2024 salary enhancements are budgeted in the Statewide Account within DBM.

Juvenile Justice and Mental Health Collaboration Project Grant

Grant funding for the Juvenile Justice and Mental Health Collaboration project decreases in the fiscal 2024 allowance by approximately \$102,000. Funding through the grant had been provided from the U.S. Department of Justice since fiscal 2020 to support collaboration across systems to improve responses and outcomes for youth with mental illness or simultaneous mental illness and substance abuse who come into contact with the juvenile justice system. In fiscal 2023, OPD was able to award \$151,335 to Maple Shade, an Eastern Shore mental health facility. In fiscal 2024, the remaining \$49,740 is being used for the same purpose and funds 1 social worker; however, fiscal 2024 reflects the conclusion of the funding available through the award. **OPD should comment on whether the project was considered successful and whether it is expected to continue with the conclusion of the federal resources.**

Personnel Data

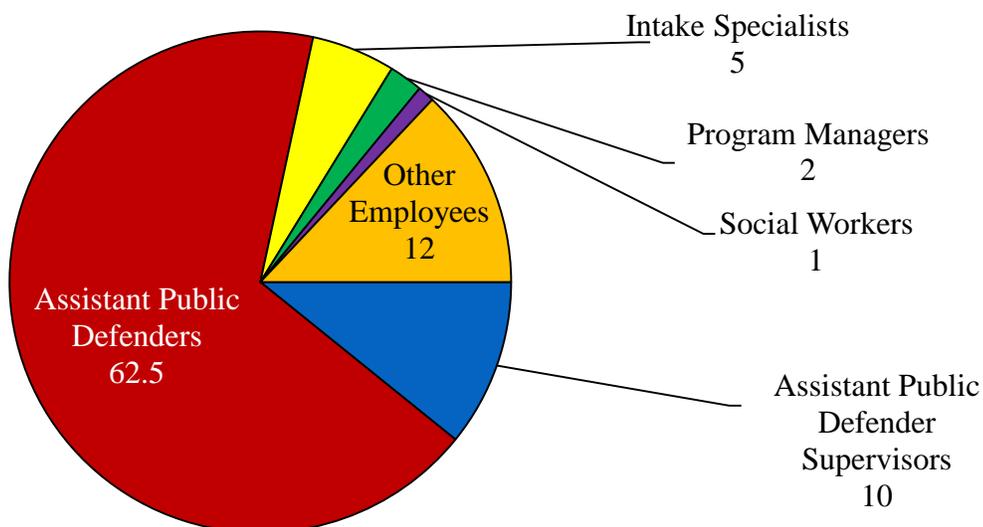
	<u>FY 22</u> <u>Actual</u>	<u>FY 23</u> <u>Working</u>	<u>FY 24</u> <u>Allowance</u>	<u>FY 23-24</u> <u>Change</u>
Regular Positions	883.50	883.50	926.50	43.00
Contractual FTEs	<u>85.37</u>	<u>53.50</u>	<u>64.00</u>	<u>10.50</u>
Total Personnel	968.87	937.00	990.50	53.50

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	54.87	6.21%
Positions and Percentage Vacant as of 12/31/22	92.50	10.47%
Vacancies Above Turnover	37.63	

- Vacancies at OPD remain exceptionally high. As of December 31, 2022, OPD had 92.5 vacant positions, with 14 positions having been vacant for at least 12 months. Of the 92.5 vacant positions, 62.5 vacancies, more than two-thirds, are for assistant public defenders (APD). A full breakdown of the vacant positions may be found in **Exhibit 3**.

Exhibit 3
Office of the Public Defender Vacant Positions
As of December 31, 2022

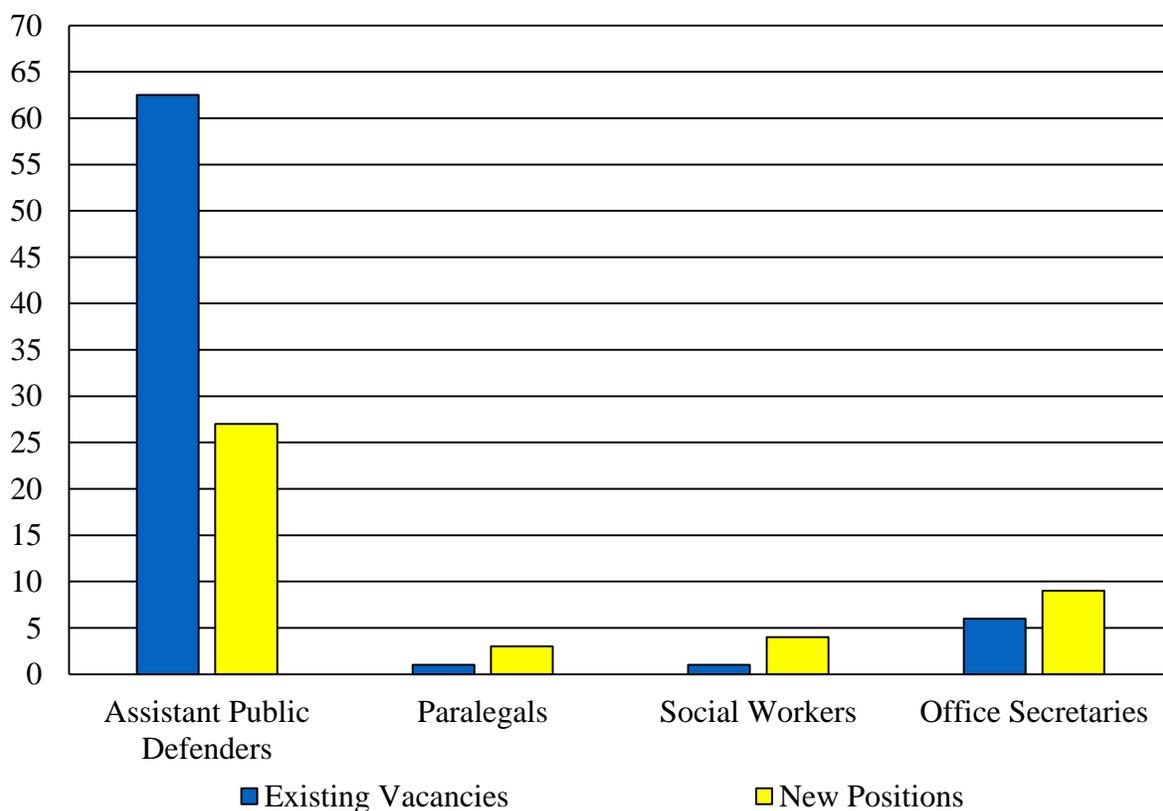


Source: Department of Budget and Management; Department of Legislative Services

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- The fiscal 2024 allowance for OPD includes 43 new regular positions and 10.5 new contractual positions. OPD’s need for contractual positions has historically fluctuated based on workload demands, with the fiscal 2023 budget having reduced the number of contractual full-time equivalent positions by 16.25 positions. The fiscal 2024 allowance restores 10.5 of those positions in response to increased workload. The 43 new regular positions all have at least one matching vacancy as of December 31, 2022. The fiscal 2024 allowance provides for 27 new APDs, while there are currently 3 vacant APD positions in administration, 3 vacant APD positions in leadership, 17 vacant APD positions in district court operations, 5 vacant APD positions in juvenile court, 2 vacant APD positions in parental defense, and 22 vacant APD positions in the circuit court. A full comparison of existing vacancies and new positions may be found in **Exhibit 4**.

Exhibit 4
Existing Vacancies and New Positions
Fiscal 2024



Source: Department of Budget and Management; Department of Legislative Services

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- In an effort to address the staffing difficulties among attorney positions at OPD, the fiscal 2024 allowance includes more than \$5.9 million budgeted in the Statewide Account within the Department of Budget and Management to provide salary increases through the Annual Salary Review (ASR) process.

OPD should comment on their strategy for filling the existing vacancies, how the ASR will be applied, and a timeline for filling positions to reduce vacancies in line with budgeted turnover. Additionally, OPD should comment on why the new positions are needed and how they differ, if at all, from the existing vacant positions.

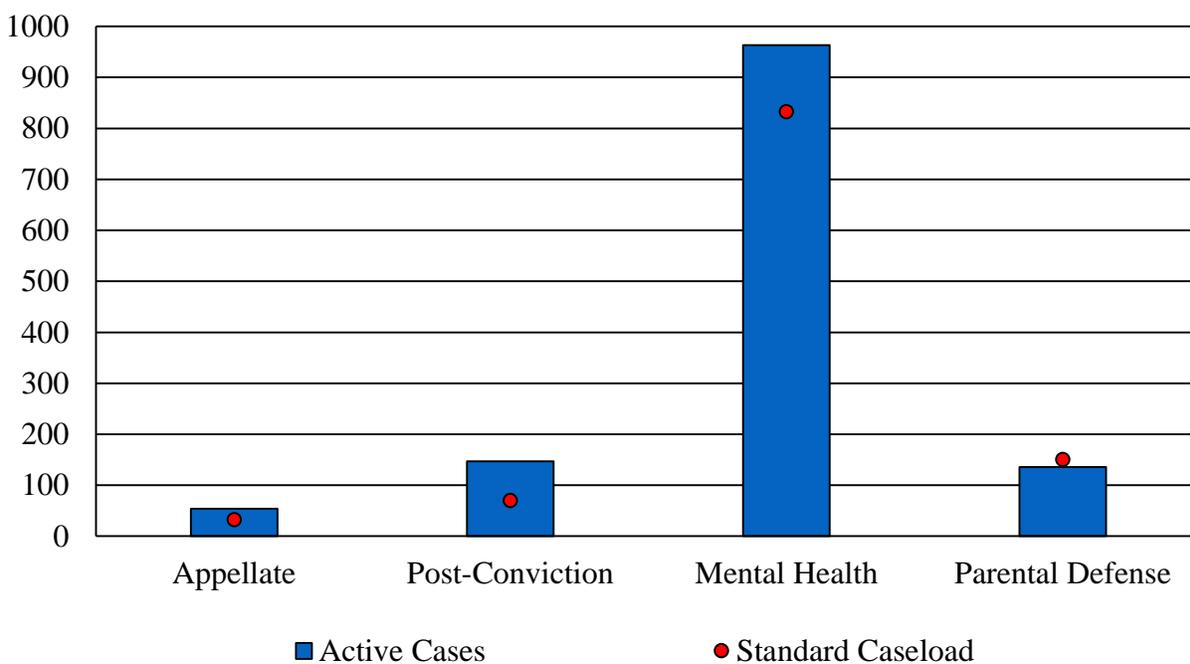
Key Observations

1. Average Attorney Caseloads Exceed Standard Workloads

The 2022 *Joint Chairmen’s Report* (JCR) requested a report from OPD regarding the office’s staffing needs. OPD submitted this report, which discussed a number of issues resulting from the staffing shortage the office is experiencing. While OPD used standard workloads from the 2005 *Maryland Attorney and Staff Workload Assessment* for this report, they also noted that the American Bar Association, RAND Corporation, and the National Center for State Courts were expected to release new case standards in the fourth quarter of calendar 2022. The release of these standards has since been delayed to calendar 2023.

OPD’s average attorney caseloads by division exceed the standard number of cases in three of the four divisions where a standard exists. The highest disparities are seen in the Mental Health division, where attorneys have an average of 963 active matters instead of the standard 833, and the Post-Conviction division, where attorneys handle 147 active cases instead of the standard of 70 cases. Additional data on average attorney caseloads and standards may be found in **Exhibit 5**.

Exhibit 5
Average Attorney Caseloads vs. Standard Caseloads
 As of June 30, 2022



Source: Office of the Public Defender; Department of Legislative Services

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The fact that three case types exceed the standards set for OPD is a critical issue that needs to be addressed in order for the office to achieve its goal of providing superior legal representation to indigent defendants. As shown in **Exhibit 6**, OPD estimates that they need to add 42 attorneys to bring their caseloads in line with standards, including 39 attorneys for the circuit court and 3 for the District Court. The fiscal 2024 allowance provides 27 attorney positions to partially address this staffing shortfall. As the exhibit further reveals, distribution among the jurisdictions is not even, as some jurisdictions have filled positions beyond what is needed to meet caseload standards, while others fall short.

While filling vacancies and adding additional attorneys has the potential to reduce the average caseload per attorney, it is also important that the forthcoming new standards be applied within OPD.

Exhibit 6
Attorneys Needed to Meet Standards
Based on Fiscal 2022 Caseloads

<u>District</u>		<u>District Court</u>						<u>Circuit Court</u>					
		<u>Attorneys</u>	<u>Opened Cases</u>	<u>Active Matters</u>	<u>Standard Caseload</u>	<u>Cases Handled Beyond Standard</u>	<u>Attorneys Needed to Meet Standard</u>	<u>Attorneys</u>	<u>Opened Cases</u>	<u>Active Matters</u>	<u>Standard Caseload</u>	<u>Cases Handled Beyond Standard</u>	<u>Attorneys Needed to Meet Standard</u>
1	Baltimore City	48	11,713	18,158	728	-16,640	-23	46	3,178	6,820	156	-306	-2
2	Lower Shore	11	7,532	12,489	630	5,559	9	10	1,142	2,694	191	857	4
3	Upper Shore	7	5,547	10,308	630	5,898	9	17	1,948	4,634	191	1,475	8
4	Southern Maryland	14	8,294	13,171	630	4,351	7	13	768	1,843	191	-600	-3
5	Prince George's	32	9,402	18,167	705	-4,393	-6	20	1,367	3,045	140	291	2
6	Montgomery	22	4,530	10,487	705	-5,023	-7	10	642	1,974	140	568	4
7	Anne Arundel	15	9,098	16,311	705	5,736	8	15	1,188	2,742	140	643	5
8	Baltimore	15	11,785	16,942	705	6,508	9	34	4,014	5,845	140	1,070	8
9	Harford	8	3,176	4,998	630	-42	0	9	718	1,790	191	134	1
10	Howard/Carroll Frederick/	13	3,175	5,048	630	-3,142	-5	8	821	2,114	191	519	3
11	Washington	14	5,176	9,903	630	1,083	2	12	944	3,006	191	672	4
12	Allegany/Garrett	8	2,214	5,197	630	157	0	4	646	1,939	191	1,202	6
	Total	207	81,642	141,179		52	3	197	17,376	38,446		6,525	39

Note: Number of attorneys reflects filled positions.

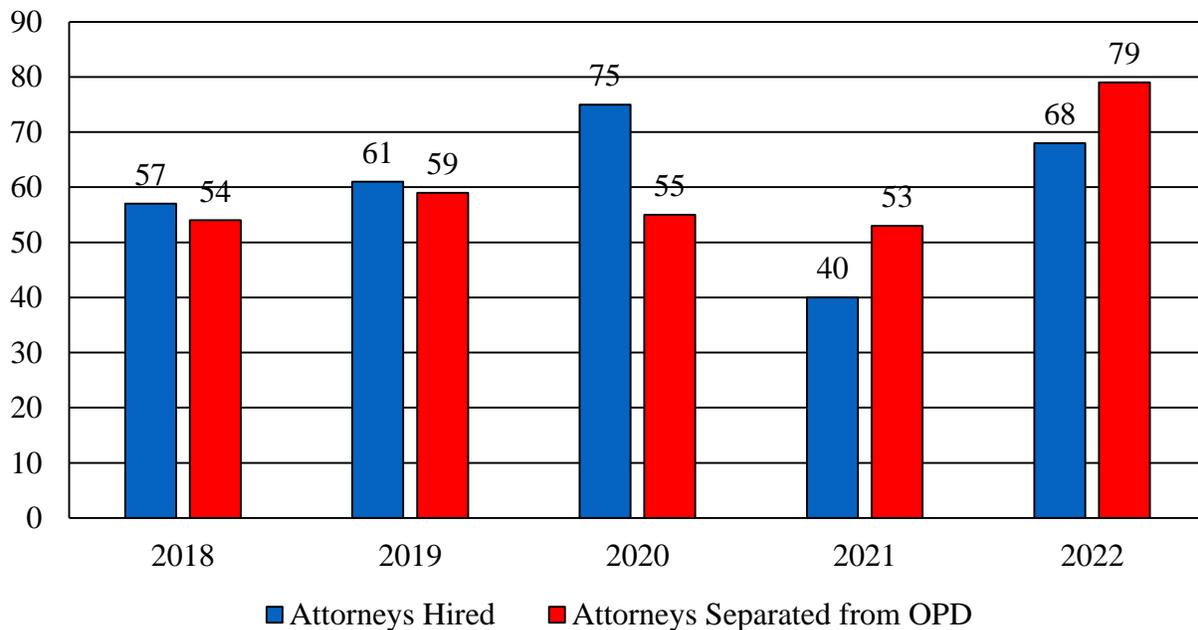
Source: Office of the Public Defender; Department of Legislative Services

OPD should comment on the extent to which existing staff could be redistributed based on the workload needs identified in each jurisdiction. The Department of Legislative Services (DLS) recommends the adoption of committee narrative requesting a report on average caseloads within OPD and how caseloads compare to the new standards which are expected to be released in calendar 2023 by the American Bar Association, *et al.*

2. Attorney Departures Outpace Hiring in Consecutive Years

OPD’s staffing struggles involve issues with both hiring and retention. In order to better understand the scope of the personnel problems with which OPD is contending, the 2022 JCR requested a report on staffing in terms of hiring and separation. The report revealed that in fiscal 2018 through 2020, the office was able to hire more attorneys than they lost to retirements, transfers, and other reasons for departure. However, in fiscal 2021 and 2022, the office lost a combined 24 more attorneys than they were able to hire. **Exhibit 7** displays further data on hiring and separation numbers for OPD.

Exhibit 7
Attorney Hiring and Separation
Fiscal 2018-2022

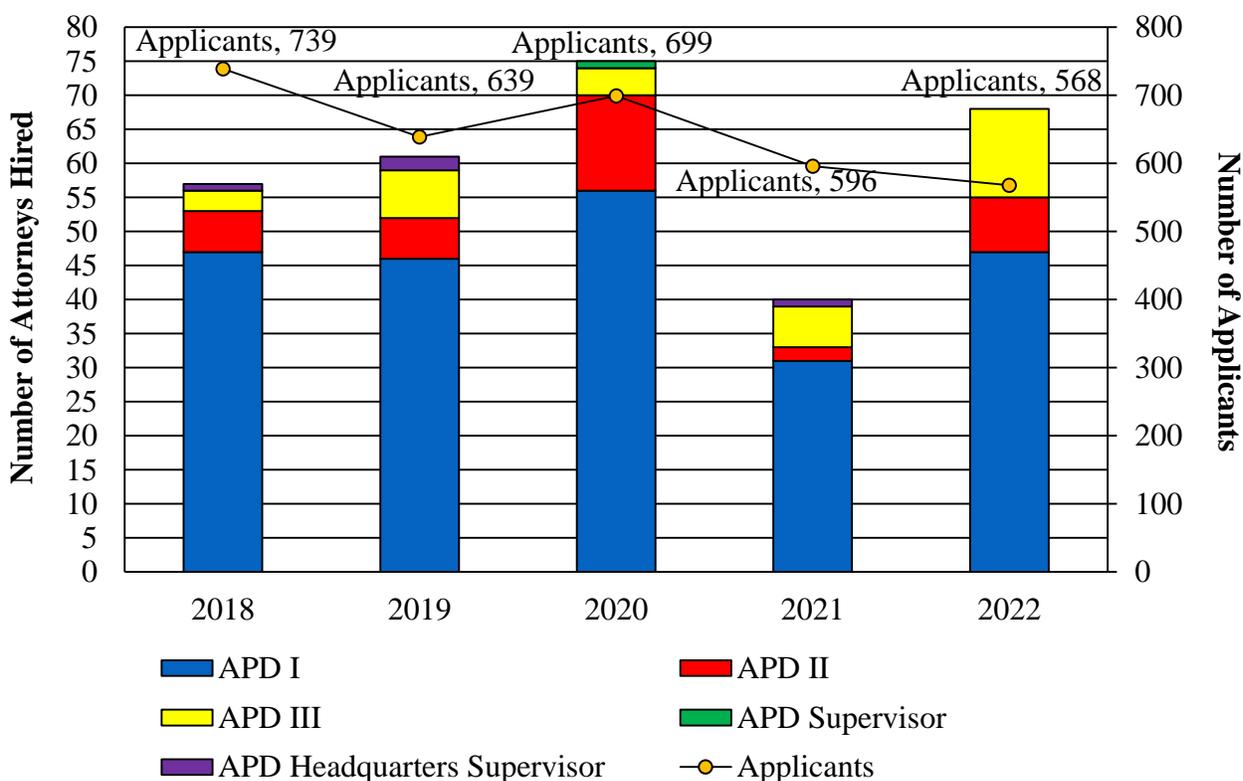


OPD: Office of the Public Defender

Source: Office of the Public Defender; Department of Legislative Services

The retirements of multiple senior attorneys in fiscal 2022 also created more vacancies for higher level attorneys, which has caused OPD to need to adjust their hiring practices to fill those more senior roles, in addition to attorney roles where less experience is needed. This has resulted in changes to the number of APDs hired at different classifications. In fiscal 2022, 13 attorneys were hired as assistant public defender IIIs, in contrast to the prior four fiscal years having seen a combined 20 attorneys hired at that level. **Exhibit 8** illustrates the number of attorneys hired at different classification levels between fiscal 2018 to fiscal 2022.

Exhibit 8
Attorney Hiring by Classification
Fiscal 2018-2022



APD: assistant public defender

Source: Office of the Public Defender; Department of Legislative Services

Despite the changes in hiring practices, the past two fiscal years have shown that OPD is contending with various issues while attempting to be properly staffed, including departures outpacing hiring, and decreasing retention of senior attorneys.

OPD should comment on what further changes in hiring practices can be made to allow for hiring of attorneys to outpace departures. Additionally, OPD should comment on the difference between the number of applicants for APD positions and the number of applicants hired and how current hiring processes impact this difference.

Operating Budget Recommended Actions

1. Adopt the following narrative:

Caseload Standards Report: The committees are concerned about the high caseloads in the Office of the Public Defender (OPD), which exceed the current standards for cases per attorney. The committees request a report, to be submitted by November 1, 2023, detailing the average caseloads for attorneys in all of OPD’s tracked case types between fiscal 2019 to 2023, using the caseload standards that OPD expects to adopt in calendar 2023.

Information Request	Author	Due Date
Caseload standards report	OPD	November 1, 2023

Updates

- ***March 2020 Cybersecurity Incident:*** In February 2022, OPD completed work with the Department of Information Technology (DoIT) to advance the office’s cybersecurity conditions. This included the creation a risk management policy, a risk assessment, and a policy for managing security updates. Additionally, OPD created and filled a cybersecurity analyst position, which is dedicated to monitoring and remediating cybersecurity threats.

Appendix 1
2022 Joint Chairmen’s Report Responses from Agency

The 2022 JCR requested that OPD prepare three reports. Electronic copies of the full JCR responses can be found on DLS Library website.

- ***Attorney Applicant, Hiring, and Separations Report:*** OPD submitted a report detailing the numbers of applicants for jobs in the office, the number of applicants hired, and the number of separations of attorneys. Further discussion of this report may be found in Key Observation 2 of this analysis.

- ***Information Technology Security Conditions Report:*** OPD worked with DoIT to advance their cybersecurity conditions after a March 2020 security incident. The submitted report notes that all recommendations made by DoIT as a result of the 2020 incident have been implemented. The recommendations included resolutions for the three items that remained from the 2021 Office of Legislative Audits report on OPD.

- ***Staffing Needs Report:*** OPD submitted a report detailing their caseloads based on the number of attorneys currently working for the office. The report was based on standards that were established in 2005. New standards were expected in calendar 2022 but are now expected in calendar 2023. Notably, the report states that the office currently employs 26 social workers, which is 25 below the number needed to have the ratio of 8 attorneys per social worker. Further discussion of this report may be found in Key Observation 1 of this analysis.

Appendix 2
Case Management Replacement
Major Information Technology Project
Office of the Public Defender
(\$ in Thousands)

New/Ongoing: Ongoing								
Start Date: 8/21/2018					Est. Completion Date: 3/2/2023			
Implementation Strategy: Waterfall								
(\$ in Millions)	Prior Year	2023	2024	2025	2026	2027	Remainder	Total
GF	\$2.550	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000.	\$0.000	\$2.550
Total	\$2.550	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$2.550

- **Project Summary:** OPD has implemented eDefender, a case management application that has been customized for use by OPD. The system has been in use since July 2020, with the program now being used for most purposes for which it was implemented. The system helps the agency manage and process cases from intake through representation and allows for more efficient reporting of case outcomes and other statistics.
- **Need:** This project replaced a decade-old case management system and enabled the agency to support real-time data exchange, meet current security requirements, and increase teleworking capability. Additionally, the eDefender software works with other applications OPD uses, allowing for integration of data between programs.
- **Observations and Milestones:** eDefender implementation is mostly complete, with application monitoring being the largest part of the project remaining as OPD continues to ensure proper function of the new system.
- **Other Comments:** OPD is currently anticipating a budget amendment transferring funds from DoIT to receive funds for this project in fiscal 2023.

**Appendix 3
Object/Fund Difference Report
Office of the Public Defender**

<u>Object/Fund</u>	<u>FY 22 Actual</u>	<u>FY 23 Working Appropriation</u>	<u>FY 24 Allowance</u>	<u>FY 23 - FY 24 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	883.50	883.50	926.50	43.00	4.9%
02 Contractual	85.37	53.50	64.00	10.50	19.6%
Total Positions	968.87	937.00	990.50	53.50	5.7%
Objects					
01 Salaries and Wages	\$ 94,722,616	\$ 100,502,419	\$ 112,425,962	\$ 11,923,543	11.9%
02 Technical and Special Fees	14,880,289	17,814,376	18,532,417	718,041	4.0%
03 Communication	481,224	408,160	370,960	-37,200	-9.1%
04 Travel	75,636	71,803	70,000	-1,803	-2.5%
06 Fuel and Utilities	97,366	105,064	97,366	-7,698	-7.3%
07 Motor Vehicles	48,826	31,540	86,910	55,370	175.6%
08 Contractual Services	4,757,160	5,800,753	4,903,977	-896,776	-15.5%
09 Supplies and Materials	241,836	167,966	211,534	43,568	25.9%
10 Equipment – Replacement	592,664	753,783	461,997	-291,786	-38.7%
11 Equipment – Additional	145,090	5,000	101,750	96,750	1935.0%
13 Fixed Charges	2,761,595	2,827,659	3,834,503	1,006,844	35.6%
Total Objects	\$ 118,804,302	\$ 128,488,523	\$ 141,097,376	\$ 12,608,853	9.8%
Funds					
01 General Fund	\$ 114,458,274	\$ 124,435,075	\$ 138,398,477	\$ 13,963,402	11.2%
03 Special Fund	475,756	291,911	282,919	-8,992	-3.1%
05 Federal Fund	2,018,189	1,702,784	1,451,516	-251,268	-14.8%
09 Reimbursable Fund	1,852,083	2,058,753	964,464	-1,094,289	-53.2%
Total Funds	\$ 118,804,302	\$ 128,488,523	\$ 141,097,376	\$ 12,608,853	9.8%

Note: The fiscal 2023 appropriation does not include deficiencies. The fiscal 2024 allowance does not include contingent reductions or cost-of-living adjustments.